

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 25, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:04 p.m. in the Council Chambers, 200 East Main Street, on June 25, 2010.

Members present were Chairman Peter Brown, Barry Stumbo, Louis Stout, James Griggs and Jan Meyer (arrived at 1:07 p.m.). Members Kathryn Moore and Noel White were absent. Others present were Jim Hume, George Dillon and Mark Newburg, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Department of Law. Staff members in attendance were Bill Saltee, Barbara Rackers and Wanda Howard.

Swearing of Witnesses - Prior to sounding the agenda, the Chairman asked all those present who wished to speak at today's meeting to raise their right hand and be sworn. The oath was administered to numerous citizens in attendance.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the February 26, 2010 meeting would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Moore, White, Meyer absent) to approve the minutes from the February 26, 2010 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** - appeals for a variance to reduce the required rear yard from 25' to 0' in order to retain a building addition in a Professional Office (P-1) zone, on property located at 1460 Newtown Pike (Council District 2).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. The glassed enclosure is only visible from the golf course, where there is a heavily landscaped 25' buffer between the rear property line and the improved part of the course.
2. The patio that existed prior to erection of the enclosure, in conjunction with the construction of the office building prior to development of the adjacent golf course, create a unique circumstance and contribute to justifying a reduction along this property boundary.
3. Strict application of the Zoning Ordinance would require that the addition be removed entirely, which would result in an unnecessary hardship to the occupants of the office building, with little or no benefit to the recreational use of the adjoining property.
4. The circumstances surrounding this variance request have resulted, at least in part, from the original location of the office building so close to the property line. However, a good faith effort is now being made to rectify a problem that has gone unnoticed for several years.

This recommendation of approval is made subject to the following conditions:

1. The enclosure may remain in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. A building permit shall be obtained from the Division of Building Inspection within 30 days following action by the Board.
3. Action of the Board shall be noted on an amended Final Development Plan for the subject property.
4. The variance is granted only for the purpose of allowing the enclosure to remain as constructed.

Representation – Mr. Roger Ladenburger was present on the appellant's behalf to request a postponement of the subject appeal to the July 30 meeting.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Moore, White absent) to postpone **V-2010-62: BETTER BUSINESS BUREAU OF CENTRAL KENTUCKY** until the July 30 meeting.

2. No Discussion Items - The Chairman asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2010-60: JAMES A. BALLARD & BARBARA CAROL ANGEL** - appeal for a variance to increase the allowable height of a fence from 6' to 8' in a Single Family Residential (R-1C) zone, on property located at 2309 Lakeside Drive (Council District 5).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the area. Fences up to 8' in height are common along Alumni Drive, and the proposed fence will match the height of an existing fence on the adjoining property to the west. The final alignment of the fence along Alumni Drive will comply with sight distance requirements of Article 3-3 of the Zoning Ordinance, as determined by the Division of Traffic Engineering.
2. Strict application of the Zoning Ordinance would allow a fence of just 6' in height, which would not be as compatible with other existing fences in the immediate area and would not serve to mitigate noise impacts as well as a taller fence.
3. The location of this corner lot on a busy arterial street, combined with the elevated location of the residence on the subject property, does contribute to justifying the requested height increase for the proposed fence.
4. The appellants, after receiving a fence permit in error, have been working in good faith to rectify this situation, and their actions should not be interpreted in any way as an attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The 8' tall fence may be erected in accordance with the submitted application and site plan, with the understanding that the final alignment of the fence shall comply with the sight distance calculations made by the Division of Traffic Engineering. Such compliance may result in the fence being slightly more than 10' back from the inside edge of the sidewalk where the fence terminates near the intersection of Alumni Drive and Lakeside Drive.
2. An amended fence permit shall be obtained from the Division of Building Inspection prior to erecting the fence.
3. In order to provide certainty that the final alignment of the fence complies with sight distance requirements, the appellants shall ensure that the fence contractor meets at the site with staff from the Division of Traffic Engineering prior to erecting the fence.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There

was no response; therefore, photos of the subject property were not presented.

Representation – Mr. James A. Ballard, appellant, was present. He indicated that he had reviewed the conditions and would abide by them.

Referring to one neighbor's letter to the Board, Mr. Stumbo noted his opposition to the proposed fence because it would impair the visibility of drivers approaching the intersection of Lakeside and Alumni Drives (which is not signalized). He asked whether Mr. Ballard had discussed the issue of concern with any of his neighbors. Mr. Ballard responded affirmatively, noting the suggestion to build the fence 25 feet back from Alumni Drive and leaving some greenspace to ensure that visibility will not be hampered. However, he proposed to build the fence 29 feet back from Alumni Drive.

Mr. Hume stated that Traffic Engineering and Building Inspection staff had met with Mr. Ballard at the site, and they had come to an agreement about where the fence should be located so that the sight distance from the intersection is maintained.

Dr. Ralph A. Herms, whose original letter of objection was referenced by Mr. Stumbo, was present. Dr. Herms stated that he represented the neighbors on Impala Lane; and that he had met with and discussed the issue, as well as alternatives, with Mr. Ballard. He said they had reached an agreement that was satisfactory to everyone; and there now was no objection to what Mr. Ballard was proposing, as stated in his follow-up letter to the Board.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Moore, White absent) to approve **V-2010-60: JAMES A. BALLARD & BARBARA CAROL ANGEL** (a variance to increase the allowable height of a fence from 6' to 8' in a Single-Family Residential [R-1C] zone on property located at 2309 Lakeside Drive) based on the staff's recommendation of approval and subject to the three conditions.

- b. **V-2010-61: W.T. YOUNG, INC.** - appeals for a variance to reduce the required setback from a front property line/future expanded right-of-way from 10' to 3' for a porch addition in a Professional Office (P-1) zone, on property located at 2220 Young Drive. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor negatively alter the character of the general vicinity. The small porch addition will not extend into the expanded right-of-way of Young Drive. Landscaping along the front of the building will be retained, and a similar feature (a front entrance canopy) exists

- on a nearby building.
2. The location of the existing building relative to the expanded right-of-way of Young Drive is a unique and special circumstance that contributes to justifying the requested variance.
 3. Strict application of the Zoning Ordinance would allow only a very narrow projection into the front yard, which would not be very functional and might appear somewhat odd given the mass of the building.
 4. The circumstances surrounding this variance request have resulted from the desire to make a fairly minor addition that will improve the appearance of the front of the building. It will in no way reflect an attempt to circumvent the requirements of the Zoning Ordinance, since the projection's distance to the current right-of-way will still be in compliance.

This recommendation of approval is made subject to the following conditions:

1. The porch addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Tom Wilmes, with Wilmes and Associates Architects, was present representing the appellant. He indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Moore, White absent) to approve **V-2010-61: W. T. YOUNG, INC.** (a variance to reduce the required setback from a front property line/future expanded right-of-way from 10' to 3' for a porch addition in a Professional Office [P-1] zone on property located at 2220 Young Drive) for the reasons listed by the staff and subject to the two conditions.

- c. **V-2010-63: JOHN PAPPAS** - appeals for a variance to reduce the required side yard from 3' to 1'5.5" so that a one-story addition can be replaced with a two-story addition in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 322 W. Third Street .(Council District 1)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed addition will be inset slightly from the side wall of the front portion of the dwelling, and will not extend beyond the footprint of the existing addition that is to be removed. The proposed addition was approved by the Board of Architectural Review on October 28, 2009, and a Certificate of Appropriateness was subsequently issued, which will ensure that the construction is consistent with the character of the Northside Historic District.
2. The alignment of the existing dwelling relative to the side property line is a special circumstance that contributes to justifying the requested variance.
3. Strict application of the Zoning Ordinance would limit the proposed addition to just a single story, which is unreasonably restrictive due to the prevalence of multi-story structures in the immediate area of this historic district.
4. The circumstances surrounding this variance request reflect an attempt to make a reasonable improvement to the subject property, with no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. All construction activity shall be done in accordance with the Certificate of Appropriateness issued on January 19, 2010, or subsequent approvals by the Board of Architectural Review/Division of Historic Preservation.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Frank Culberson, architect, was present on behalf of the appellant. He indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously (White, Moore absent) to approve **V-2010-63: JOHN PAPPAS** (a variance to reduce the required side yard from 3' to 1'5.5" so that a one-story addition can be replaced with a two-story addition in a High Density Apartment/Historic District Overlay [R-4/H-1] zone on property located at 322 W. Third Street) as recommended by staff and subject to the three conditions.

- d. **V-2010-64: DR. HAROLD BLACK** - appeals for a variance to reduce the required setback from a residential zone from 100' to 20' for expansion of an animal clinic in a Wholesale and Warehouse (B-4) zone, on property located at 1073 S. Broadway. (Council District 11)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed improvements, to include an entrance lobby and handicap ramp, are relatively minor and are located no closer to the residential zone than the existing animal clinic building.
2. The narrow width of the subject lot is a special circumstance that contributes to justifying a reduction in the required setback for this land use from a residential zone.
3. Strict application of the Zoning Ordinance would prevent any expansion of the building, regardless of location, or compliance with federal ADA requirements. This would appear to be unreasonably restrictive and an obstacle to making beneficial improvements to the subject property.
4. The proposed additions are intended to improve the accessibility and appearance of an established use of the property as an animal clinic, and should not be construed in any way as an attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The additions shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Frank Culberson, architect, was present representing the appellant, Dr.

Harold Black, who also was present. He indicated that they had reviewed the conditions and agreed to abide by them.

A letter of concern from an adjoining property owner on Duncan Avenue was reviewed by the Board.

Ms. Meyer asked whether the proposed expansion would involve the front of the building only. Mr. Culberson responded affirmatively and described what the building expansion would entail. Ms. Meyer suggested that the neighbor's letter be reviewed by Dr. Black and a copy provided for him in order to try to address some of the issues of concern that were raised (i.e., noise, fence damage due to the previous ice storm, etc.). Chairman Brown proceeded to the next case on the agenda, giving the appellant an opportunity to review the neighbor's letter.

(Following disposition of **A-2010-58: ERIC RUSCHMAN**, the Chairman returned to the aforementioned appeal.)

Mr. Culberson said that both he and Dr. Black had read the submitted letter. Chairman Brown asked whether the Board had any concerns regarding this case. Ms. Meyer responded that she didn't, noting that the neighbor's complaint really didn't have anything to do with the applicant's request. She felt that the listed issues of concern needed to be worked out between Dr. Black and his neighbor. Since there was no further discussion, the Chairman called for a motion.

Action – A motion was made by Ms. Meyer, jointly seconded by Mr. Stumbo/Mr. Stout, and carried unanimously (White, Moore absent) to approve **V-2010-64: DR. HAROLD BLACK** (a variance to reduce the required setback from a residential zone from 100' to 20' for expansion of an animal clinic in a Wholesale and Warehouse [B-4] zone on property located at 1073 S. Broadway) as recommended by staff and subject to the two conditions.

- e. **CV-2010-50: MT. EDEN CHRISTIAN CHURCH** - appeals for a conditional use permit to expand the fellowship hall, and variances to reduce the required rear and side yards from 25' to 5' for the expansion in an Agricultural-Rural (A-R) zone, on property located at 8568 Bates Creek Road. (Council District 12)

The Staff Recommended: Approval of the requested conditional use permit, for the following reasons:

1. The proposed expansion of the fellowship hall is relatively minor in terms of size (600 square feet), and should not adversely affect the subject or surrounding properties, which includes agricultural land to the north and east. The church is already an established use at this location and its expansion is not expected to significantly increase traffic or parking demands.

2. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommended: Approval of the requested variance, for the following reasons:

- a. Reducing the required side and rear yards to 5' should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. The addition will align with the easterly wall of the existing fellowship hall, and there are no activities on the adjoining property to the north that might be disturbed.
- b. The location of the existing fellowship hall and the nonconforming size of the lot are special circumstances that contribute to justifying some reduction of the required side and rear yards at this location.
- c. Strict application of the Zoning Ordinance would virtually prevent any viable expansion of the fellowship hall, other than toward the existing parking lot. The recessed orientation of the front wall of the fellowship hall is a distinctive feature of this site, currently.
- d. The proposed addition is an effort to improve the services provided by the church for its members, and does not represent any intent to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to initiating any further construction.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Gary Sorrell was present representing the church and submitted a signed petition in support of the proposed expansion. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs, and carried unanimously (White, Moore absent) to approve **CV-2010-50: MT. EDEN CHRISTIAN CHURCH** (a conditional use permit to expand the fellowship hall, and variances to reduce the required rear and side yards from 25' to 5' for the expansion in an Agricultural-Rural [A-R] zone on property located at 8568 Bates Creek Road) as recommended by the staff and subject to the two conditions.

- f. **C-2010-46: FIRST BAPTIST CHURCH OF MADDOXTOWN** - appeals for a conditional use permit to construct a new church in a Single-Family Residential (R-1D) zone, on properties located at 3549 and 3573 Huffman Mill Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed church facility has been designed to comply with off-street parking and vehicle circulation requirements, and appropriate attention has been given to storm water management needs and the preservation of open space at the front and rear of the property.
2. Sewage treatment will be handled privately, subject to approval by the Board of Health, and all other needed public services such as police and fire protection are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The proposed church facility shall be constructed in accordance with the submitted

application and revised site plan provided on June 3, 2010. It is understood that minor design changes may be required based on a final review by the Divisions of Engineering and Traffic Engineering. If such changes result in a loss of off-street parking spaces under phase one or phase two of construction, sanctuary seating shall be adjusted accordingly to ensure that minimum off-street parking requirements are satisfied.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and occupancy of the church.
3. The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking areas, circulation, and access points shall be subject to review and approval by the Division of Traffic Engineering.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. Any pole lighting for the parking lots shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing any nearby properties.
7. A consolidation plat for the two lots that comprise the subject property shall be filed with the Division of Planning, and recorded prior to the issuance of an occupancy permit.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Jimmy Piper, architect with GRW, was present on the appellant's behalf.

He indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously (White, Moore absent) to approve **C-2010-46: FIRST BAPTIST CHURCH OF MADDOXTOWN** (a conditional use permit to construct a new church in a Single-Family Residential [R-1D] zone on properties located at 3549 and 3573 Huffman Mill Pike) as recommended by staff and subject to the seven conditions.

- g. **C-2010-51: ALBERT WARFIELD** - appeals for a conditional use permit to extend the regulations of the Single-Family Residential (R-1D) zone 50' into the adjoining Neighborhood Business (B-1) zone for construction of a single family residence, on property located at 6911 Greenwich Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it will result in a single family residential use that should be compatible with other residential uses in the Jimtown Rural Settlement. Adjoining properties to the north and south and to the rear of the subject property are all used for single family residential purposes, and there are no active business activities on any of the B-1 properties in the area.
2. Sewage treatment will be handled privately, as there is room for a septic system on the front of the subject property, and public services such as police and fire protection are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The single family residence shall be constructed in accordance with the submitted application and site plan, with a minimum of 6' side yards and a 10' rear yard as specified in the Zoning Ordinance for the R-1D zone.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

3. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
4. Driveway access to Greenwich Pike shall be as permitted by the Kentucky Transportation Cabinet.
5. The remaining B-1 portion of the subject property shall be left as open space.

Chairman Brown asked whether or not there were objectors present to the subject appeal. An adjoining neighbor responded that she needed clarification regarding the actual location of the proposed single-family residence.

Representation – Since neither the appellant nor representation was present at this time, the Chairman asked staff to try to contact Mr. Warfield. He proceeded to the next case on the agenda without opposition.

(Following disposition of C-2010-52: LEXINGTON CHRISTIAN ACADEMY, the Chairman returned to the aforementioned appeal.)

At this time, Mr. Sallee reported that he was unable to reach the appellant by phone. Mr. Griggs suggested a postponement of the subject appeal, since the neighbors who were present had questions and the appellant was unavailable to answer them. Therefore, the Board took the following action.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs, and carried unanimously (White, Moore absent) to postpone C-2010-51: ALBERT WARFIELD until next month's meeting.

(Following disposition of A-2010-56: DUNEDIN REALTY, LLC & NEW PROVIDENCE PARTNERS, LLC, the Chairman recalled the aforementioned case since the appellant now was present.)

Chairman Brown explained to Mr. Warfield that his case was called twice previously; and due to his absence, it was postponed by the Board until next month. Mr. Warfield responded that he was delayed by the traffic. Chairman Brown asked Mr. Warfield if he had discussed his application with the neighbors who had questions. Mr. Warfield said yes, briefly. Ms. Jackson said they were trying to figure out where the proposed residence would be built on the property (in relation to her adjoining property), which Mr. Warfield attempted to explain. A brief discussion followed. In view of the postponement, Chairman Brown suggested that Mr. Warfield try to resolve the issue(s) of concern regarding this request with Ms. Jackson during the interim.

- h. C-2010-52: LEXINGTON CHRISTIAN ACADEMY - appeals for a conditional use permit to expand the preschool capacity from 20 to 117 children in a Single-Family Residential (R-1C) zone, on property located at 450 W. Reynolds Road (Council District 9).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or

surrounding properties. Adequate off-street parking is available, and existing facilities can be used without the need for any new construction for this use. An outdoor play area of 3,000 square feet will be provided, which is slightly larger than the minimum size of 2,925 square feet that is required for a preschool with 117 students. The school facility is served by two minor arterial streets, Keithshire Way and West Reynolds Road.

2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The preschool/child care facility shall be established in accordance with the submitted application and site plan, with no more than 117 children to be cared for.
2. All necessary permits, including an occupancy certificate, shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
3. Hours of operation shall be limited to 7:30 a.m. to 5:30 p.m. on Monday through Friday, with children from 3 to 5 years of age to be accommodated.
4. An outdoor play area of at least 3,000 square feet in size shall be provided, to be fenced and screened in accordance with the requirements of the Division of Building Inspection.
5. This approval is strictly for the purpose of increasing capacity and hours of operation at the preschool, and does not authorize the expansion of any facilities (e.g., off-street parking) that may be reflected on the submitted site plan. Any revisions to the nearby off-street parking area will require Planning Commission approval of an amended development plan for the property.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Bob Bourget, facilities director for the Lexington Christian Academy, was present.

Referring to the staff report, Chairman Brown inquired about the expansion of the preschool capacity (from 20 to 75), without prior approval. Mr. Bourget explained the oversight that occurred when the original request was made to the Board, noting the person who represented them at that time was no longer there; and that it was not anticipated that the classroom limit of 20 would be exceeded so quickly (due to the success of the preschool program). However, he said they did contact the Fire Marshall's office and were in compliance with all the safety regulations; but they now needed to get approval from the Board to increase the capacity to 117 children, which would match the maximum limit allowed by State licensing (KY Cabinet for Health and Family Services). In response to the Chairman, Mr. Bourget said he understood that if they wanted to increase the capacity to more than 117 children, they must come back to the Board or they would be in violation of the conditions. He indicated, when asked, that they had reviewed the conditions for approval and agreed to abide by them.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (White, Moore absent) to approve **C-2010-52: LEXINGTON CHRISTIAN ACADEMY** (a conditional use permit to expand the preschool capacity from 20 to 117 children in a Single-Family Residential [R-1C] zone on property located at 450 W. Reynolds Road) based on the staff's recommendation and subject to the five conditions.

(Following disposition of the aforementioned case, the Chairman returned to **C-2010-51: ALBERT WARFIELD**.)

- i. **C-2010-53: SOUTH SIDE PUB** - appeals for a conditional use permit to provide live entertainment (karaoke and bands) in a Planned Shopping Center (B-6P) zone, on property located at 3650 Boston Road. (Council District 9)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit, for live entertainment inside of the building, should not adversely affect the subject or surrounding properties, which include offices to the south and residences to the east and west that are fairly distant from the site and adequately buffered by open space, roadways and the Kroger store. The building will be soundproofed to the maximum extent feasible (if not already completed under the prior conditional use permit), which should further minimize the potential for disturbances to any of the surrounding properties.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Live entertainment shall be provided in accordance with the submitted application and site plan, to consist of karaoke and small bands (no more than three persons) or individual performers.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to providing live entertainment.
3. Live entertainment shall be limited to Monday through Saturday between the hours of 8:00 PM and midnight.
4. Live entertainment shall be limited to the interior of the building, and all exterior doors shall remain closed (with the exception of entering and exiting the establishment) when live entertainment is provided.
5. The portion of the building occupied by South Side Pub shall be soundproofed as determined to be feasible by the Division of Building Inspection.
6. Live entertainment shall be managed to ensure that noise or other emissions do not create a nuisance to the surrounding neighborhood.
7. Should the owners/operators of South Side Pub cease to occupy the subject property, the conditional use permit shall become null and void.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Rita Lowery was present representing the appellant. She informed the Board that the objector who was present earlier had left after their discussion and was no longer opposed to the request to provide live entertainment. Ms. Lowery indicated that she had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (White, Moore absent) to approve **C-2010-53: SOUTH SIDE PUB** (a conditional use permit to provide live entertainment [karaoke and bands] in a Planned Shopping Center [B-6P] zone on

property located at 3650 Boston Road) as recommended by staff and subject to the seven conditions.

- j. **C-2010-54: MARTY CLIFFORD** - appeals for a conditional use permit to establish a dog grooming business in a Neighborhood Business (B-1) zone, on property located at 754/758 N. Limestone. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The dog grooming business will be fairly limited in scope, with no more than two dogs to be groomed at a time. Significant increases in traffic are not expected, and adequate off-street parking is located on the adjoining property owned by the appellant.
2. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The dog grooming business shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the business.
3. A minimum of four off-street parking spaces shall be maintained on the adjoining property (at 110 Luigart Court) for use by the dog grooming business.
4. Overnight boarding of dogs is not allowed, and temporary boarding during the day shall only take place inside of the building for those dogs that are being groomed.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Marty Clifford, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously (White, Moore absent) to approve **C-2010-54: MARTY CLIFFORD** (a conditional use permit to establish a dog grooming business in a Neighborhood Business [B-1] zone on property located at 754/758 N. Limestone) as recommended by staff and subject to the four conditions.

- k. **A-2010-58: ERIC RUSCHMAN** - appeals for an administrative review to determine that a proposed 40' by 60' steel frame building should be permitted as an agricultural use in the Agricultural Rural (A-R) zone, on property located at 411 S. Cleveland Road. (Council District 12)

The Staff Recommended: Approval, and that the decision of the Division of Building Inspection be overturned, for the following reasons:

1. The subject property is a 10-acre tract of land in the Agricultural Rural (A-R) zone, and based upon information supplied by the appellant, the proposed building is legitimately considered as a structure for an "agricultural use" as that term is defined in Article 1-11 of the Zoning Ordinance.
2. The proposed building is intended to support a variety of agricultural activities on the subject property, such as hay production and horse pasturing, that are currently taking place, as well as future activities involving other livestock, such as goats and cattle.

This recommendation of approval is made subject to the following conditions:

1. The building's location shall comply with the submitted application and site plan.
2. The 40' by 60' steel frame building shall be used only for agricultural purposes and/or for

uses that are accessory to the principal residence on the subject property.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

At this point, Mr. Griggs announced that he would be disqualifying himself from this case (because of his relationship with the applicant).

Representation – Mr. Eric Ruschman, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them. In response to the Chairman, Mr. Ruschman said he is a physician and the proposed structure would be used for such activities as working on his tractor, etc., but not for storage of a car collection.

Action – A motion was made by Mr. Stout, and seconded by Mr. Stumbo to approve **A-2010-58: ERIC RUSCHMAN** (an administrative review to determine that a proposed 40' by 60' steel frame building should be permitted as an agricultural use in the Agricultural-Rural [A-R] zone on property located at 411 S. Cleveland Road) as recommended by staff and subject to the two conditions.

Discussion of Motion – Chairman Brown asked Mr. Hume for comment. Mr. Hume said in the future, when Building Inspection has similar requests, on these small lots, they will probably bring (refer) them all to the Board because of the 10-acres. Probably you know, the State recognizes 5 acres as a workable farm. He said the fact that this is a steel building was also a concern; and that the Board should not be surprised if they see this again. Mr. Ruschman asked whether he would need to get a permit from Building Inspection, if the appeal is approved. Mr. Hume responded that they will consider this an agricultural building, which will not require a building permit. He said they will just file this case study with it and denote such in the file.

The votes were as follows:

Ayes: Meyer, Stumbo, Stout, Brown

Absent: White, Moore

Abstention: Griggs

The motion for approval carried, 4 to 0.

(Following disposition of the aforementioned case, the Chairman returned to **V-2010-64: DR. HAROLD BLACK.**)

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow

an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-59: PAUL S. O'NEILL** - appeals for a variance to reduce the required front yard from 20' to 0' in order to pave an off-street parking area in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 419 W. Second Street. (Council District 1)

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance could adversely affect the public health, safety and welfare, as the design of the proposed circular drive/off-street parking area is likely to result in difficult maneuvering of vehicles, confusion regarding the number of parking spaces provided, and possible interruptions to the use of the public sidewalk.
- b. The extensive paving that is proposed, directly in front of the residence, would degrade the appealing front yard/streetscape character of the Northside Historic District, which is currently typified by significant areas of green space in the front of most homes, with vehicle parking to the rear.
- c. The conversion of West Second Street to two-way traffic, with a loss of on-street parking, is a circumstance shared by many properties, and is not sufficiently unique to the subject property to justify the extent of the dimensional variance and the paving that is proposed for the subject property.

Chairman Brown announced that he would be disqualifying himself from this case (due to his relationship with the applicant). Vice-Chairman Stout took over the proceedings at this time.

Presentation – Ms. Rackers stated that the subject property is located at 419 W. Second Street; it is zoned R-4 with an H-1 overlay; and it is on the edge of the Northside Historic District. A photo was shown of the property in question and other properties on the same side of the street. Ms. Rackers said the residence, which is a triplex, has no off-street parking; and as a result of the proposed two-way conversion of W. Second Street, the appellant will lose the available on-street parking that they now have, which is reportedly 6 spaces. To remedy this situation, the appellant is proposing to install a circular drive-way, to be paved with brick, which will take up most of the front yard. The layout of the proposed circular drive and off-street parking area was shown on the overhead. Ms. Rackers noted that the (concrete) aprons for the circular drive would extend over the property line on both sides. She said parking in the front yard in the R-4 zone is not permitted by the Zoning Ordinance; and that the applicant is requesting a variance to reduce the front yard requirement from 20 feet to 0 feet to accommodate the

proposed off-street parking area. Although the staff understands the concern about the loss of on-street parking, what the appellant is proposing is not typical of this historic neighborhood. Photos were shown of the small front yard on the property and side views as well; a view of the (front) brick area on the property next door, which is atypical for the neighborhood; and views of other properties in the immediate vicinity with greenspace in the front. Most of the properties in the neighborhood have either one on-street parking space in front of the residence or driveways along the side of the homes that lead to rear yard parking areas.

Ms. Rackers said the Board of Architectural Review is always concerned about the loss of greenspace, either in the front or the back of property in an historic neighborhood, when they look at these cases, which typically are disapproved. She noted that the Director of Historic Preservation, Betty Kerr, was present to answer any questions the Board might have regarding historic preservation or the BOAR (process). She said in addition to the greenspace being removed from the front of the house, there are design concerns from Traffic Engineering as well, particularly regarding the logistics of the circular drive and the ability of cars to maneuver. Of note is that the parking area is not wide enough to comply with Traffic Engineering standards. Ms. Rackers said it was possible for staff to look favorably on one parking place in the front, but that proposal would have to go through the Board of Architectural Review for consideration. She further stated that the BOAR would not review the applicant's parking proposal until the requested variance is approved by the Board of Adjustment, because of the Zoning Ordinance requirements.

A very similar request was disapproved by the Board in 2001 for a nearby property located on West Short Street, in the Western Suburb Historic District, due to concerns about the loss of greenspace and the potential impact to the front yard character of that historic area. The staff recommended disapproval of this variance appeal, for the same reasons, in addition to logistics/design concerns and the likelihood that such extensive paving in the front yard would ultimately degrade the character of this historic neighborhood. Ms. Rackers said if the requested variance is approved, it will set a further precedent (in view of the brick paving in front of the house next door) and will likely lead to other similar requests.

Mr. Griggs asked about the brick area in the front (yard) of the house next door. Ms. Rackers

responded that she didn't know when that was approved; and that perhaps Ms. Kerr would be able to provide an answer to his question regarding the property. Mr. Griggs commented that it may not be a precedent if the paved front yard was legal at the time it was done.

Mr. Stumbo asked for comment from Traffic Engineering. Mr. Gallimore said he visited the subject property some time ago, when the (parking) proposal was initiated. He said the current design of the proposed circular drive does not meet Traffic Engineering's guidelines, as far as being large enough to offer a turning radius for a larger vehicle, such as an SUV, although it may work for a compact vehicle. Also, the apron overhangs the property line at the right-of-way, which is not allowed.

Mr. Stout asked, from Historic Preservation's standpoint, why the appellant's parking proposal is not advisable. Director Betty Kerr stated that, technically, this application has not come to the historic design review process yet because, at this point, it is not an allowed use; and, therefore, it has not formally been weighed. She said they have looked at this situation, in conjunction with knowing this (proposal) was coming before the Board for consideration today and maybe coming to the BOAR review process. However, she said the appellant's proposal contradicts most of the design guidelines for preservation and improvements called for in the historic district. The retention of the greenspace in front of the residential buildings is a very important part of the character of the neighborhoods; and any potential loss of yard area is always very carefully weighed. The concept of parking in front of the residences as just a practice within the historic districts, there are very few situations where that is part of the character of the historic area, even as it has evolved over time. She said West Second Street is really one of our iconic streets of streetscape, yards and houses here in Lexington, as is West Third Street; and they (both) are very significant streets. The setbacks and the way these yards and the houses relate to each other in their inner workings up and down the street are very significant parts of the character of the district. For each individual property, you look at what is important to retain in that property, and the front yards in this area would certainly be one of them. The process has not, in any situation she could think of, whether in the Northside Historic District or other of our historic districts, ever recommended approving parking in front yards.

Mr. Stout then asked whether it was normal for people in the Second Street area, because of the history

of that street, to come to Historic Preservation (BOAR) first for a recommendation relative to this. Ms. Kerr said a letter was sent to their office requesting to file an application with their H-1 overlay process; and that the staff responded to that letter on April 27, 2010 informing the applicant that, as it is not currently an allowed use, the application could not be accepted, and it would need to go through the BOA process first. Also, it has been indicated to the applicant that it is not something consistent with the design guidelines, and the staff would need to recommend disapproval of such should it be made into a formal application and be weighed by their BOAR. She said she could not speak for what the BOAR would determine; but the staff, in its charge, would need to recommend disapproval relative to the design guidelines they are charged with carrying out.

Ms. Meyer asked if Ms. Kerr had seen the new application (submittal); and if so, whether it was acceptable. Ms. Kerr said she had seen what was submitted to the Board for consideration; and that it was contradictory to what Historic Preservation is charged with carrying out in the historic district.

Representation – Mr. Paul O'Neill, appellant, was present. An exhibits packet was distributed to the Board for review. Mr. O'Neill stated that he has lived at 419 W. Second Street for the past 11 years and has always battled (had to contend) with the parking conditions, because the property is located in a very parking competitive area as far as regular parking and event parking use. He noted the design change that was made to the proposed off-street parking area in front of the residence, after receiving the staff's recommendation for disapproval of the original submittal in conjunction with the requested variance; and that they were trying to come up with a workable option that would be acceptable to the Board and the BOAR. Reference was made to the revised design of the off-street parking area contained in the exhibits packet, which was shown on the overhead at Mr. Stout's request. Mr. O'Neill said they were open to discussion in trying to figure out how to meet the specifications and still provide parking in the front; and that they are proposing a 50/50 split of the property (which is 40 feet wide), as far as the parking area and greenspace. He noted that there are other residential properties in the vicinity with parking in front and offered to provide photos for illustration. One of those properties, located at 474 W. Second Street, was approved a few years ago according to Mr. O'Neil; and it demonstrates that, with landscape design, the parking can be made very appealing and still meet the parking needs of the property owner. He explained the reasons for needing the two parking spaces: 1)

having to park across the street from the residence; 2) incidents of vandalism [i.e., car windows broken and items stolen, tires slashed, auto theft, etc.]; 3) for personal safety and traffic-related reasons; and 4) the conversion of West Second Street to a two-way street resulting in the loss of at least 6 on-street parking spots close to the property. (Referring to the exhibits packet), Mr. O'Neill noted the petition signed by neighboring residents on W. Second Street that fully supported the new design proposal for the parking area.

Mr. Stout asked if the persons who signed the petition were fully aware of the requirements of the BOAR/Historic Preservation. Mr. O'Neil said yes, he believed some of them were. He related his understanding that the Board of Adjustment's approval was necessary before going through the BOAR process. Mr. Stout commented that he didn't think Historic Preservation was in favor of any adjustments to the aesthetics the way it is right now. Mr. O'Neill said he would still like to meet with the BOAR pending approval from the Board to find out what would be acceptable and work on meeting their needs (requirements) as well as his for parking.

Ms. Meyer commented that she sympathized with Mr. O'Neill, after observing the situation during her site visit yesterday. However, she said she understood the BOAR's standpoint as well. Ms. Meyer asked Mr. O'Neill if he would accept one parking space. Mr. O'Neill said yes, that one parking space would be acceptable; but two were preferable, considering the dire need for parking and the dwelling being a duplex. Ms. Meyer reiterated that this was a tough situation for which she hoped there could be a compromise. Mr. O'Neil asked the Board to consider "the reality of life on Second Street" and how they do want downtown to be a livable place where they can really enjoy and be a part of Lexington.

Mr. Stout said that possibly the staff could work with Mr. O'Neill to come up with something (appropriate) that doesn't offend the historical aspect of this and also accommodates part of what the applicant wants. Otherwise, he said from what the applicant presented to the Board, it was pretty tough.

Mr. Griggs asked for comment from Traffic Engineering staff regarding (vehicles) backing out onto the street in view of the loop or circular drive being eliminated. Mr. Gallimore said he didn't see a functional way for the loop to work, but there may be room for one potential parking space. (Referring to the new

parking area plan), he said the configuration for parking space #1 seemed to be too shallow, and he was concerned that a vehicle parked there would actually overhang the sidewalk. Mr. O'Neill stated that the parking space in question is 18½ feet long and parking space #2 is 21 feet long. Mr. Gallimore responded that they normally like to see at least a 20-foot driveway; and that this is a little bit wider than what they require for two parking spaces. He said he didn't know if the spaces shown could possibly be pushed over to the right and narrowed in order to have two 20-foot-deep stalls. Mr. Gallimore reiterated that parking space #1, as currently proposed, would not be acceptable.

Ms. Emily O'Neill was present and commented about fearing for her personal safety; having her car broken into; and having to carry grocery items across the street to her home. She said she understood what the Board was saying and was willing to make any necessary compromise. Photos were provided of the brick paved three-space parking area in front of the residence next door (on the left), to illustrate how (well) it functions; a view of the neighbor's driveway on the opposite side of the subject property and the curbing along both sides of it, making access to the appellant's side/rear yard difficult; a frontal view of the appellant's property and the property on the left with the parking area, to illustrate the similar lot sizes; and a neighboring property with a driveway leading to the rear yard.

Referring to the photo showing the property with the three-space bricked parking area in front, Mr. Stout asked staff if this was done prior to any regulations. Ms. Rackers responded that she didn't know when the parking area in question was installed, or if it was done prior to or after the H-1 (overlay) was imposed. She said there may have to be some research to determine that. Mr. Gallimore responded that, as far as their knowledge of this site, Traffic Engineering probably would not have approved this, not because of the design, but because a lot of the time they (normally) do not approve residential parking. Ms. Kerr responded that she didn't know when it was installed either; but she did say it was not installed after the historic district design review process was put into place, and hence, it was not approved by the historic district review process. Mr. Stout then asked Ms. Kerr whether Historic Preservation would consider any compromise regarding a proposal for one parking space in front. She said certainly in every situation, all of our processes, including the Historic, are willing to look at any proposal. There is a philosophical and what the process is charged with conflict in this particular topic, that being, to put parking in front of the house, which is a no-no. Our design guidelines state very

clearly that parking shall be at the side and to the rear of historic properties and not in the front yards. She said it is a greenspace issue, as well as a character of the neighborhood issue, of experiencing this neighborhood without cars parked in the front yardage, regardless of its surface, and seeing that vista all the way down the street.

Mr. Stumbo asked if there currently was no access to the back yard. Mr. O'Neill responded that was correct, noting that the side yard is really tight, and a parking lot for the Broadway apartments at the rear of his lot. Mr. Stumbo reiterated that this is a difficult situation, especially not having access to the rear yard; but the Board also understood Historic Preservation's viewpoint (perspective). He questioned whether any special considerations have been made when a home like this has no other alternative.

Ms. Kerr responded that there are a number of historic properties throughout the downtown area that have an identical situation, in that they have no driveway, rear ally or access; and they have utilized on-street parking through the years. She said they work with applicants in all sorts of ways, but this is one of the toughest situations they can come across because there is no wiggle room or alternatives as to how to do this. She said it's sort of an all or nothing situation – either you have a spot for a car or you don't. Thinking about the other properties that have similar characteristics of no available parking, they continue to have no available parking, which is the existing condition at the time these properties are acquired and it continues to be the existing condition today.

Ms. O'Neill commented that they are one of two houses on W. Second Street that has no off-street parking; and that everyone (else) has a driveway or access to parking behind their house. She said they also are unique in the fact that W. Second Street is planned for conversion to two-way traffic, which potentially eliminates 6 to 8 on-street spaces in the vicinity of their house. She felt this special circumstance would create even bigger problems in terms of available parking. Additional photos were shown depicting: the mature Poplar tree located between the appellant's property and the property next door; the off-street parking area in front of the property next door (on the left); a view illustrating the parking situation across the street from the appellant's residence, where yellow curbing to restrict parking was noted; a neighboring property with a wide driveway and single parking space in front; a view of the streetscape along W. Second; views of the raised curb along the driveway of the property

adjacent to the subject property; a view of the appellant's side yard leading to the back where a cistern is located (which would prohibit parking there); the property across the street with a driveway leading to the rear yard parking area; and neighboring properties with brick paved walkways. The appellant proposes to use materials found throughout the neighborhood, such as brick.

Mr. Griggs asked to hear comment from Mr. Gallimore about backing out onto the street, in the event of having one parking space on the property and two-way traffic. Mr. Gallimore said you just have to look at a typical subdivision, where there are mostly two-way road systems and people are allowed to back out of their residential property. Backing over the right-of-way is strictly enforced for commercial properties; so if this was a condo or rental property, where there is a parking lot, that's where Traffic Engineering doesn't allow backing out into the street.

Mr. Stout said as much as he wanted to help the O'Neills, he was unable to support the proposal that was submitted today. He suggested that the case be continued until July, allowing the appellants to meet with staff and Historic Preservation to find a workable solution in order to have one parking space on the property. Ms. O'Neill responded that they were unable to discuss the parking proposal with Historic Preservation previously because of the zoning issue (i.e., parking in the front yard is not allowed in the R-4 zone per Article 16), as indicated in a letter from Historic Preservation dated April 27, 2010; and that they were directed to the Board after a refusal was issued from Building Inspection.

Ms. Kerr commented regarding the process. She said it is correct that Historic Preservation cannot accept a formal application, which the O'Neills submitted, and they were not in a position to be able to accept it. She said there is an alternative tied to what Mr. Stout was suggesting, which is that they have a conceptual review process – an informal process with no binding decision. She said it is an open discussion with the Board of Architectural Review and the staff. She strongly encouraged the appellants to participate in that, noting they are in a position to do that at any time; but they are not in a position to accept a formal request.

Mr. Stout asked if the appellants would be agreeable to meet with Historic Preservation for a conceptual review while the case was continued for one month.

Mr. Hume commented that just because the Board approves the variance to reduce the building line to allow the parking doesn't mean the parking (plan/proposal) will be approved. He said the Board is in no jeopardy by allowing this variance; and that it still has to go through the process that would aid in the appellant's process with Historic Preservation. He said the Board was in no jeopardy to give them the variance to allow the appellants to have parking, and he couldn't see dragging them back in here over an issue that's not going to allow them to do the parking without Historic Preservation's approval. They won't be able to get a permit for parking unless Historic Preservation allows it.

Mr. Griggs said he agreed with Mr. Hume. He said if there is room for a single parking space that meets the parking requirements, giving them approval for that, then they can fight it out with BOAR.

Mr. Hume said the required parking would have to be behind the building line anyhow; so once it is reduced to zero, it's a matter of Historic Preservation allowing the design.

Mr. Stout again asked whether the appellants would consider continuing the case until next month to allow them to meet with Historic Preservation for a conceptual review (of their plan). Mr. O'Neill responded affirmatively, noting they certainly were willing to work with Historic Preservation with regard to a conceptual review.

(In response to Mr. Stout's inquiry) Ms. Rackers said the next BOAR meeting would be held on July 28th, two days before the regularly-scheduled BOA meeting. She said in order to give the appellants time to work something out after the conceptual review, it may be preferable for the appellants to come back for the August meeting.

Ms. O'Neill made further comment about the aesthetics of existing off-street parking areas in the front yards of residences in the vicinity; and the work that was done to revise the original parking plan submittal to address the reasons for the staff's recommendation of disapproval. Additional photos for illustration were shown. A brief discussion followed.

Mr. Griggs noted that the Board was inclined to allow one parking space that would be legal according to the standards; and that counsel was drafting findings for approval.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Brown abstaining; White, Moore absent) to approve **V-2010-59: PAUL S. O'NEILL** (a variance to reduce the required front yard from 20' to 0" in order to pave an off-street parking area in a High Density Apartment/Historic District Overlay [R-4/H-1] zone on property located at 419 W. Second Street) based on the following findings submitted by counsel:

FINDINGS FOR APPROVAL

1. The requested variance for parking only in the front yard will not adversely impact this or the neighboring property where the extent, materials and landscaping must be approved by the BOAR to assure compatibility with the neighborhood, so long as only one space is permitted.
2. The proposed elimination of all on-street parking on W. Second is a special circumstance creating undue hardship not faced by many other historic properties, and this property has no access for side yard or rear yard parking.

CONDITIONS

1. The design of the parking area, which is to accommodate parking for only one vehicle, shall be subject to approval by the Board of Architectural Review.
2. Prior to construction, a permit shall be obtained from the Division of Building Inspection.
3. The design/layout of the parking area shall be subject to approval of the Urban County Traffic Engineer.

D. Conditional Use Appeals

1. **C-2009-9: BROADWAY CHRISTIAN CHURCH** - under consideration for revocation of a previously approved conditional use permit for expansion of a parking lot, for failure to comply with conditions specified by the Board, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street (Council District 2).

The Board of Adjustment approved a conditional use permit for the subject property on April 24, 2009, subject to several conditions. According to the Division of Building Inspection, not all conditions have been fulfilled as required, and Building Inspection has requested a hearing to determine if the conditional use permit merits revocation.

Representation – Mr. Mike Bailey, church trustee, was present.

Chairman Brown asked to hear from Building Inspection regarding this case. Mr. Hume stated that the church was granted some modifications to a parking lot over a year ago; and that the proposed improvements still are incomplete. He said Building Inspection made contact with them (tried to contact the church, to no avail) and got no response, after which a revocation hearing was requested. Shortly thereafter, Mr. Bailey contacted Building Inspection and said that he had been charged with overseeing the improvements to be made. In the process, since last month's meeting, Mr. Bailey contacted Building Inspection. Mr. Hume asked him to explain what his plan is to complete the improvements.

Chairman Brown commented that he had passed by the parking lot several times and seen the trees that still need to be planted. Mr. Bailey responded that the trees, which were donated during the winter months, have now been installed. He went on to say that Mr. Darryl Nunnelley, who previously represented the church before the Board of Adjustment, made a couple of mission trips and fell behind on the (parking expansion) project. Mr. Bailey stated that he became involved when he found out the project needed to be completed; but, he was not aware of the completion date or the communication between the church's representative (Mr. Nunnelley) and Building Inspection. He said he subsequently contacted Ms. Marinaro and Mr. Hume to explain the situation and inform them that bids were being secured for the work to proceed. Mr. Bailey told the Board that the church fully intended to do what was required and anticipated starting the project by the 15th of next month.

Chairman Brown related his understanding that Mr. Bailey was assuring the Board that progress was being made. He asked whether Mr. Hume wanted to have the case continued for two months. Mr. Hume responded that he would be agreeable to a continuance, now that they have the church's attention and Mr. Bailey was on board. Mr. Bailey was also agreeable to report back to the Board. Since there was no further discussion, the Chairman called for a motion.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously (White, Moore absent) for a two-month continuance of **C-2009-9: BROADWAY CHRISTIAN CHURCH**, until the August meeting.

2. **C-2010-55: DANIEL SEXTON** - appeals for a conditional use permit to establish a campground/RV park in the Agricultural-Rural (A-R) zone, on properties located at 4705 and 4721 Old Iron Works Road. (Council District 12)

The Staff Recommended: Disapproval, for the following reasons:

- a. Reasonable assurance has not been provided that sewage generated at the proposed facility can be effectively managed on a temporary basis, in accordance with the requirements of the Fayette County Board of Health.
- b. Emergency response to a fire event on the subject property will be hindered by the lack of any fire hydrants in the vicinity, and the likelihood that temporarily graveled surfaces on internal roads will not have a sufficiently solid base to support the transport and maneuvering of a large and heavy fire truck.
- c. The facility has not been designed to effectively handle different weather conditions that might be encountered during the World Equestrian Games. Under dry conditions, the extensive network of graveled drives (over two miles proposed) will likely generate disturbing levels of dust. Under wet conditions, the absence of any gravel or paving at individual camp sites will compromise the overall quality of the sites and will likely render some inaccessible or not functional.

Staff Report – Mr. Sallee stated that the appellant was seeking a conditional use permit to establish a

temporary campground for recreational vehicles primarily oriented to the World Equestrian Games (WEG) scheduled for late September and early October of this year. The properties, located at 4705 and 4721 Old Iron Works Road, comprise about 91 acres of land, most of which is located in an Agricultural-Rural (A-R) zone. A small portion of the property is in an M-1P (Mobile Home Park) zone, which straddles the Fayette-Scott County line. The requested conditional use for a campground is an allowable conditional use in the A-R zone. Several aerial photos were shown on the overhead to orient the Board to the proposed location. The proposed site plan also was shown on the overhead projector.

Mr. Sallee stated that the conditional use request was for about 445 RV camp sites on a portion of the 91-acre farm; and other than the access drive to Lisle Road, no portion is actually in the M-1P zoned portion of the property. The staff, in reviewing this application, felt that the infrastructure issues associated with this proposed temporary use were of significance. Given the large number of RV sites proposed for the property, there was concern about Board of Health approval for sanitary sewer waste. The staff contacted the Board of Health earlier this month, and officials with that office were somewhat unsure about the temporary nature of the proposed use. The Board of Health has jurisdiction over water service to the subject property and indicated about the ability to provide potable water to the RVs, there was also some uncertainty about that part of the provision, since campers will need a water source as well.

Another concern of the staff was the lack of any fire hydrants in the vicinity that could be used in the event of a fire on the subject property. The staff has learned that there is a 6" water line along Old Iron Works Road; however, there is no fire hydrant in the immediate area, which was cause for concern about the provision of fire service, especially given that the access drives are temporary and proposed to be graveled.

The final issue raised in the Staff Report was the uncertainty with weather and the use of gravel; and whether or not the numerous temporary drive aisles would have a dust impact to adjoining properties. All of the three issues raised in the staff report led the staff to recommend disapproval of this requested conditional use for the three reasons listed on the agenda. The staff found that reasonable assurance had not been provided that sewage generated by the facility could be effectively managed. Secondly,

emergency response to a fire event could be hindered by the lack of fire hydrants in the vicinity. Thirdly, the facility had not been designed, in the staff's opinion, to effectively handle different weather conditions because of the extensive use of gravel proposed.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant, Mr. Daniel Sexton, who also was present. He introduced Ms. Sheila Flynn, Mr. John Williams, Mr. Brent Combs (engineer/designer, Thoroughbred Engineering) and Ms. Darlene Free (Short's Travel Service, official housing agency for WEG). A handout containing several exhibits was distributed to the Board.

Appellant's Presentation – Mr. Murphy said he wanted to discuss in general the need for the temporary RV park during the World Equestrian Games to be held in late September and early October. He said there was a great need for accommodations; and that he didn't know there would be 6,000 volunteer workers at the games, half of which will not be from the Lexington area and will need lodging. Mr. Murphy said they are (proposing) a temporary RV facility; and that according to the official web site for the World Equestrian Games, there are only four RV facilities listed. The proposed RV facility would be the only one in Fayette County. He said 200 of the 444 sites will be reserved for WEG volunteers and will cost from \$60 to \$90 per night (as opposed to the facility in Midway that will rent RVs as well as the sites for them). Mr. Murphy said this is the ideal location, when you look at the location, price and the need for this type of accommodation.

Mr. Murphy spoke about Mr. Sexton's operating experience. He stated that Mr. Sexton is a licensed mobile home park operator, as well as a licensed RV park operator in KY; and that Mr. Sexton owns and operates, and Ms. Flynn manages, the three mobile home parks shown in the submitted photos (Spindletop Mobile Home Park; Ponderosa Mobile Home Park; and Spindletop Village Mobile Home community). He said the mobile home parks operated by Mr. Sexton are licensed for RVs as well. He said Mr. Sexton has offices on site, security and contractors available, and are willing to participate based on 40 years of experience in this industry.

Mr. Murphy described the campground site of approximately 91 acres, located at 4705 and 4721 Iron Works Road, shown on the map in the handout. He noted that the site is close to the Kentucky

Horse Park, but it is not visible from Georgetown Road. Access will be through Lisle Road (which is signalized) and through Old Iron Works Road. He spoke about one neighbor's concern (Mr. Peck) regarding the time it takes to get onto Georgetown Road at Old Iron Works Road. He said vehicles would be directed to go up through Lisle Road where there is a traffic signal, in order not to inconvenience residents on Old Iron Works. He said the campground is designed for people who will be driving their own RVs and it will be temporary. He noted earlier concerns that this would be a "stalking horse" for a permanent campground on this site; and that adequate services would not be provided due to the temporary nature of the use. Gravel, instead of asphalt, will be used for the internal roadway system; and the gravel will be removed at the end of the time of the use of the property and used to upgrade Mr. Sexton's farm to agricultural operations. It was noted that Mr. Sexton just inherited this property and the deed was recently recorded prior to filing the conditional use appeal; and that he has plans to extensively renovate the existing house to bring it up to horse farm standards.

Mr. Murphy said they have an understanding with Short's Travel Service, the official travel agency of the World Equestrian Games, which will be listing the RV site and taking reservations. He reiterated the great need for this type of housing, noting that the RV travel community is a significant part of the travel and tourism industry; and that people in RVs will be coming to the World Equestrian Games.

Mr. Murphy addressed the issues that were raised regarding the proposed RV campground operation. He said the conditional use application was filed a month ago, prior to which they had been discussing the RV campground proposal with other agencies. He reviewed the written recommendations they received from the Lexington-Fayette County Health Department, which included: Board of Adjustment approval of the conditional use appeal; obtaining liability insurance; and providing a clean water supply (for drinking, cooking, showering, etc.). Mr. Murphy referred to page 6 of the handout containing a letter from M & J Insurance expressing their willingness to provide liability insurance. He said they had planned to supply underground water lines to each RV site, which Kentucky American Water would install using flexible water line that would be removed when the RV park use was finished. However, they were advised by the Health Department instead to supply clean water individually to each RV (to prevent unnecessary waste). As a result, they

contacted King Bottling, which supplies clean, potable drinking water. According to the letter shown on page 7 of Mr. Murphy's handouts, it was stated by Mr. King that they had the capacity to supply up to 225,000 gallons of potable water per day, based on submitted projections.

Mr. Murphy addressed the sewage service issue, noting the Health Department's recommendation that it must either be hauled from the site to a sewage treatment facility or that service be provided on site by licensed pump trucks. He said they decided to go with the truck coming to service each individual RV unit and had chosen Martin's Sanitation Service, a licensed provider. Reference was made to the letter on page 8 of the handout, in which it was stated that Martin's Sanitation Service would pump from each unit on a daily basis or as needed by the customer. It was noted that this is the same company that currently services the RV park at the Kentucky Horse Park. Mr. Murphy said it has to be certified where the sewage is going; and that Martin's Sanitation Service has said the sewage will be taken to either of two licensed facilities in Georgetown or the Town Branch waste water treatment plant in Lexington. Regarding the solid waste issue, he said Mr. Sexton will provide at each site a trash can with lid; and that Waste Management Solutions, which is insured and licensed, would provide collection three times per week and take the solid waste to the Central Kentucky Landfill, as outlined in the letter on page 9. Pest control, as required by the Health Department, would be provided by Orkin Pest Control, as indicated in the letter on page 10 of the handout. With regard to fire protection, he said they have agreed, after discussion with the Fire Marshall and Chief, to construct a permanent fire hydrant on the existing 6-inch water line on Old Iron Works Pike (which will benefit the neighborhood residents in the future, including lowering insurance rates). He said the standard for a hydrant is that it has to generate at least 500 gallons a minute in the line to operate as a usable fire hydrant; and that they were informed by Kentucky American Water that this 6-inch water line will produce between 500 to 1,000 gallons per minute, which is above the standard required to operate a hydrant for fire fighting services. He also said the Division of Fire has requested that a loop road be built to avoid having fire trucks to back up; and that they have to provide structural support for a 94,000-pound piece of apparatus, for which it was indicated that 7 to 9 inches of concrete would normally be needed. Mr. Murphy stated that they are proposing a gravel road that will be structurally sound to support fire fighting equipment; and that Mr. Brent Combs, with Thoroughbred Engineering, has designed this so it can support that poundage and

meet the standards of the Fire Code relating to parks and campgrounds, which requires a 20-foot-wide gravel access road (the standard for a permanent campground). As to the issue of dust raised from the gravel roads, he said they would deal with that in two ways: 1) impose a low speed limit, as low as 3 mph; and 2) use a water truck to water down the roads on an as needed basis. If mud becomes an issue, they are proposing to provide additional gravel as needed (which will be stockpiled on site). Mr. Murphy pointed out that there are gravel roads in Fayette County; and it wasn't unheard of for fire equipment to go on gravel roads. With regard to security, there will be 24-hour security provided on site. Regarding electricity, KU will be installing temporary electric poles for service that will be removed following the WEG event.

Mr. Murphy reiterated that the gravel will be removed at the conclusion of the World Equestrian Games, at which time Mr. Sexton will start upgrading his farm in order to have horses there. He said the World Equestrian Games is a once-in-a-lifetime opportunity, and the Board was assured that the proposed RV park would be temporary, but with full services provided, including infrastructure. He mentioned seeing in the newspaper this week that the Spyglass Farm on Ironworks Pike will provide temporary parking for the World Equestrian Games and will have gravel on the property, as well as portable restroom facilities. He felt they were supplying a unique niche in the travel community by having a place for people in RVs to come and stay by making their reservations through the WEG site.

Mr. Murphy asked Ms. Free to tell the Board about the need for the proposed RV park, as well as Mr. Sexton and Ms. Flynn.

Ms. Darlene Free, with Short's Travel, the official housing bureau and managing partner for the World Equestrian Games, was present. She briefly spoke about the need for this RV type of affordable housing, particularly for the volunteers and others (i.e., spectators, vendors, grooms, etc.) attending or helping with the WEG event.

Mr. Daniel Sexton, appellant and property owner, was present. He said he has been in this business for about 40 years; and that the challenges the Board is hearing about are not such a challenge for

him. Mr. Sexton initially spoke about the self-contained RV and the type of people who use them. He said the rule at the proposed RV park will be that the holding tank with waste water will have to be empty before it is filled with water, which curtails the over use of water. He talked about the dumping stations at the Horse Park; and that the RV user will either disconnect the holding tank and take it to the dumping station or arrange to have service provided by a sanitation pump truck. He said that the Horse Park is served by Martin Sanitation.

Mr. Sexton said that this use is truly needed. He wasn't sure what would happen if this use was denied. He said that the Health Department had approved some 500 RV sites in Midway, already. That facility, like his, will also utilize a temporary holding tank. He said that there could be demand for up to 20,000 RVs to come to Fayette County, so what he was proposing could be "just a drop in the bucket," as he had heard horror stories of hotel room rentals during the WEG. He concluded by saying that the end result would be that, once this use was concluded, this land will be turned into a horse farm.

Board Questions – Mr. Stout asked why Mr. Sexton was making this application. Also, he said that if he planned to earn only \$60-\$90 per night, he couldn't understand why Mr. Sexton wanted to do this. Mr. Sexton responded that 1) he was focused upon the final result of converting the property into a horse farm upon completion of the WEG, and 2) because he felt this use was truly needed. He said that workers for the WEG will also need housing for a period of time longer than the 16 days that the Games are to be held.

Mr. Stout asked if he was approached by the Housing Committee of the Games. Mr. Sexton responded affirmatively, and said that the farm owners around the Midway operation were friends of Mr. Sexton. They suggested to him that he also seek to get involved in providing this use. Mr. Stout asked if Mr. Sexton was providing the financing for this use. Again, Mr. Sexton responded affirmatively, and repeated that there are "no hidden agendas" for this use. He felt that it was a stepping stone for the ultimate conversion of this farm. He said that, in essence, he runs a small city with his mobile home park located on the county line. He said that he has numerous permits and certificates for his operation.

Mr. Stout said that he did not mean to question his integrity, but said that he was concerned about this area. He said that he had a bad feeling about this request. He said that this application did not seem realistic. Mr. Sexton responded that if he breaks even, then he would consider that as "a win." He said that he is cleaning up the farm, and this proposed use will be a catalyst for the farm's improvement. This temporary use would afford him the funds to complete the conversion.

Ms. Meyer asked if all these vehicles are driving on the farm's soil, covered with gravel roadways, then won't that compact the gravel into the soil. Mr. Sexton agreed, and said that they will remove the gravel at the end of the Games. Ms. Meyer thought that would be a huge undertaking. Mr. Sexton responded that the farm next to the Horse Park will mostly have the same situation to deal with after the WEG. He did not believe that the parked vehicles would harm the farm, as the course of nature would correct any compaction. Ms. Meyer asked about the time frame for the removal of the gravel. Mr. Sexton responded that he felt it would take a couple of months to remove the gravel, due to the uncertainty of the weather. He would not let the gravel sit on the property, and become an eyesore. He said that they have worked very hard to provide a fine, and needed facility. Ms. Meyer responded that she saw this as a monumental undertaking, in a very short timeline. Mr. Sexton said that he is in the construction business, and that he would have some help, but this was not daunting to him, as he is a contractor. He felt that time was of the essence with this request.

Mr. Griggs asked the staff if they had an opportunity to review the new information that had been submitted by the appellant over the past week. He felt that there were a number of issues still on the table. Mr. Sallee responded that the day before this hearing, the staff viewed the first iterations of Mr. Murphy's exhibit information. However, today in Mr. Murphy's packet of exhibits, there are many signed documents. He thought that the appellant would address many of the issues raised by staff with their presentation, including the provision of water to the sites to control dust emissions. The staff did not consider the possibility that water service could be provided to the individual RVs.

Mr. Stumbo asked about the waste disposal part of this proposal, which was a huge issue from his standpoint. Mr. Sallee responded that he had not had an opportunity to review the Board of Health

document until this meeting began. He said that during the remainder of this hearing, he would review this document.

Chairman Brown asked to hear from the representative of the Fire Department. Captain Charles Bowen stated that they have worked with the appellant, through Mr. Murphy, and that their concerns have been addressed. He was satisfied with the appellant's proposal to provide a new fire hydrant and to provide 20' wide lanes for the RVs. He said that the details and designs regarding the installation of gravel also met their concerns.

Mr. Stout said that he felt another condition was in order, should this be approved by the Board. He recommended that a holding tank be placed on this property, for waste dumping, instead of daily service being provided by a company hauling off the waste. He thought that this part of the operation should be far enough away from the camp sites and the residents of the area.

Mr. Griggs asked the staff if they were ready to recommend approval of this request. Mr. Sallee responded that the staff had not had an opportunity in the past 24-hours to fully evaluate these documents, and thus, allow the staff to consider changing its recommendation. He said that he was still looking over the Health Department document, but believed that Mr. Mathis was present from that agency. He said that he would continue to review the letter, and he said that he also believed that a few other citizens were present to speak to this application.

To address Mr. Stout's concerns, Ms. Flynn said that the original idea for this endeavor revolved around the desire to revive the farm, after the WEG. She said that if they break even, this will still be possible. She said that the Board would be impressed with just the extent of brush removal that has occurred thus far on this property. She said that Mr. Sexton wants to continue to improve his properties, including his mobile home parks, and that he had constructed new roads and removed unsafe trees that were endangering homes and electric lines in his mobile home park. In fact, their park was not affected by the last ice storm. She said that 40 mobile homes have been removed from their mobile home park. She said that it is a daily chore to keep the mobile home park neat and tidy.

Mr. Stout asked about the impact of this use to residents along Old Iron Works Pike. Ms. Flynn said that they plan to have their RVs use Lisle Road, so that they can access the stoplight at its intersection with Georgetown Road. She felt that if someone did try to use Old Iron Works to get to US 25, they would not do it a second time. She was not aware that any residents along Old Iron Works Pike were present to object. Mr. Stout said that when he reviewed this application, it didn't seem viable. Ms. Flynn responded that when the decision was made to pursue this use, that the end result for this farm was their top goal. She said that Mr. Sexton grew up on a farm, and wanted to restore their family farm.

Mr. Stumbo said that he would need to see a condition that limited the days when RV owners could arrive at this site, and a time limit as to when they would need to leave. He also said that the use of gravel is very concerning. He said that, in the past, some owners of temporary uses have kept their gravel lots a bit longer than anticipated. He said that he is also concerned as to why this request is being made only 90 days prior to the WEG. He said that his inclination is to postpone this request, but he knew that time was of the essence to the appellant. Mr. Murphy responded that they would be amenable to the conditions offered by Mr. Stumbo. He said that there will be some visitors expected there before the Games start, and some that would stay a few days after the WEG ends. He said that it will take more than a couple of days to remove the gravel. Mr. Sexton responded that it will take 45 working days to remove the gravel, in his estimation, and he asked that the Board allow him that amount of time.

Mr. Stumbo asked why this application was so close to the WEG. Mr. Murphy responded that it has been difficult to deal with a myriad of organizations, including finding the "right person" with the correct WEG group. He said that regulatory agencies have also been uncertain as to how to treat this use. For instance, this use is not regulated the same as for the adjacent mobile home park. He said that even the Scott County Health Department had different regulations than the Fayette County office. Mr. Murphy said that "there has been a lot to learn" about the administrative process to get this type of use approved. He said that folks have even been unsure as to which regulations to apply. It had been his experience that when regulators are unsure, then it tends to take longer to navigate their process. He did not say this to blame anyone, but to offer some insights as to why it

has taken so long to bring this request to the Board.

Mr. Murphy said that he had asked Mr. Sexton the same questions that Mr. Stout has asked. He said that Mr. Sexton is used to dealing with these types of issues, based upon the business they are in. Mr. Stout asked if the RVs could pull in their horse trailers to this property. Mr. Sexton responded that horses will not be allowed on his property during this event, as he is currently in the process of removing the existing wire fences on the property. Mr. Sexton said that he would only allow horses at his facility in Paris.

Supporters – Mr. James Peck, 4768 Old Iron Works Road, was interested in a stipulation being added for this proposed use, and stated that he was 100% in support of the appellant, and his request. Mr. Peck asked to display a photograph of his home (displayed in an aerial photograph), which was 30'-40' from one of the proposed entrances to this RV park. He said that since Mr. Sexton is a farmer, that he was aware of his water and sewage concerns. However, the water line installation along Old Iron Works destroyed the roadway's pavement. He said that two recreational vehicles can not pass on this road, or if they try it once, they will not try a second time.

He asked that a ground level photo of the road be displayed, and he said that his average wait to turn from Old Iron Works left onto Georgetown Road was one minute, 46 seconds, which he felt was a long time to sit in one spot. He understood from Mr. Murphy that the gravel loop road proposed on the property was necessary, to satisfy the Fire Department's requirements. He felt that something should be done about the proposed entrance near his home, as well.

Mr. Peck said that Mr. Sexton is spending thousands of dollars on this farm, cleaning it up. He said that his great uncle did business with Mr. Sexton's father, and that Mr. Sexton is a man of his word. Mr. Peck said that Mr. Sexton has the equipment and the manpower to do what he commits to do. His only concern is about traffic, but he hoped the Board would approve this use. He said that there are only five residents on Old Iron Works, and they currently have no traffic issues.

Mr. Peck said that he owns a \$58,000 motor home, and that he does not need water brought on

board or for the sanitary sewage to be pumped out everyday. He did not think that all 444 RVs would need water everyday. He said that several area campgrounds are renting spots for as much as \$300 per night during the WEG. He said that Mr. Sexton could provide this needed use at a more reasonable rate. He said that he will be affected more than anyone else by this use, but that a resident nearby, he is willing to give Mr. Sexton a chance at providing a needed service.

Mr. Peck said he appreciated the common sense approach that he had witnessed by the Board at this meeting. He also appreciated the compassion shown by Board members. He said that we shouldn't expect people to keep up rural farms without granting them some ability to regain some income from them. He thought that Mr. Sexton had done a remarkable job improving this farm.

Mr. Peck understood that some access was necessary from Old Iron Works Road, but he had hoped that it would be restricted to Fire Department access only. He repeated that Mr. Sexton is a good neighbor, and that his family had always been a good neighbor to his family. He said that Mr. Sexton had offered to help him with his flood damage in the past, and that this was an example of his "good neighbor" approach.

Objectors – Ms. Knox Van Nagell, Director of the Fayette Alliance was present. She said that the Alliance agreed with the staff, and also recommended disapproval of this request. She said that a temporary campground on this 91-acre farm would jeopardize the health, safety and welfare of this area, and should be denied based upon the requirements of KRS 100.257, based upon the reasons articulated in the Staff Report.

Ms. Van Nagell said that the temporary and uncertain nature of the sewage system proposed for this use undermines the spirit of Board of Health regulations, and the recently approved Consent Decree from the federal EPA. Also, she felt this would also violate the five-acre limitation for septic tanks in place in Fayette County. She said that, although the WEG will be a worthwhile event for the community, there is also a need to safeguard the environmental integrity of our community. She said that some 70% of the county's waterways are currently impaired or polluted due to sanitary sewer problems, according to the Kentucky Division of Water. To allow a temporary sewage treatment

system such as this, in the face of these problems, would be irresponsible and would threaten the public health of Fayette County.

Ms. Van Nagell said that the RV park would compromise the future land use for the subject property. She said that the current land use designation in the 2007 Comprehensive Plan was for Core Equine and Agricultural Lands, according to the Rural Land Management Plan. Reading from that plan she said, "Principal uses permitted in this area should be those associated with agriculture, and its attendant housing needs. Non-agricultural conditional uses for this area should be kept to a minimum." She said that the applicant proposes more than 400 campground sits and over two miles of roadways on this farm. In the event of rain or drought, the soils could be impaired. The RVs could cause rutting and could jeopardize the fertility of this farm.

Ms. Van Nagell questioned the entity that would be responsible for removing the gravel and restoring the integrity of this land. Without expressly naming the responsible party, a campground of this magnitude would fundamentally challenge the land use and zoning categories of the property. She said that the rural landscape of this area was the reason that the WEG is coming here in the first place. She asked the Board to consider their position, and thanked them for their dedication to responsible land use planning.

Mr. Don Robinson, Zoning Committee leader for the Fayette County Farm Bureau, was also present to object to this request. He submitted a letter from the Farm Bureau for the record, and stated that they were in agreement with the staff's recommendation for disapproval of this request. He said that he did not envy the task of the Board in making a decision on this case, as he served on the Planning Commission for a number of years, and this case reminded him more of a zone change. He thought it was certainly a big "adjustment" for the Board to consider. He said he learned at this meeting that RVs are really just another crop to enhance a farm, being a third generation farmer himself. He concluded by saying that he is truly concerned about the potential for restoring this farm to a productive state if this use were approved.

Board Questions – Mr. Griggs asked Mr. Robinson to explain the potential damage for the farm if this

use were granted. Mr. Robinson responded that he was most concerned about the compaction of the soil. He felt that the use of gravel, the number of vehicles proposed and the equipment necessary to remove the sod, add the gravel and then remove the gravel at the end of the WEG, would all lead to a tremendous adverse impact to this farm. Mr. Griggs said he did not disagree, but did not believe that the appellant understood the extent of this concern. Mr. Robinson said that, if farming was truly the future use for this property, then he would be concerned as a farmer. Mr. Griggs thought that it might take several years for this farm to be productive once again, and Mr. Robinson agreed. Mr. Robinson thought that the soil on this farm was likely to be very good, at present.

Appellant's Rebuttal – Mr. Murphy said that he would like to respond to some of the issues that had been raised at this hearing. He said that Mr. Sexton is both a farmer – an owner of 70 horses – and is in this business as owner of the mobile home park. He said that if anyone knows the true impact of this proposed use on the land, it would be the appellant. He said that Mr. Sexton did not agree with Mr. Robinson's assessment, and thought that agricultural uses such as plowing and livestock operations also compact the soil. He said that he thought that gravel is really limestone, which degrades into fertilizer, and is what we are known for in our soil.

Mr. Murphy said that every argument made against having this temporary RV park on this property could have equally been made against having the World Equestrian Games here in Lexington. He said that vehicles will be compacting that land, much more than 445 RVs would on Mr. Sexton's land. There will be port-a-johns at the Horse Park, and not a sewage system such as that which will be in place on this property. He said that there had been no objections to gravel parking lots near the Horse Park compacting the soil on those lands. In fact, the WEG will be taking over other farms for use for car parking during the Games. Mr. Murphy said that he doubted that the owners of those farms thought that the gravel parking lots there would harm their lands. There will also be a need for accommodations here for the WEG, and some will want to stay here in their recreational vehicles. He said that Mr. Sexton, a horse farmer, knows that his proposal will not harm his farm. In fact, he had the expertise and knowledge to restore the farm, and remove the gravel, after the Games are over. Mr. Murphy said that Mr. Peck commented earlier that he was not concerned about dust from

this proposed use. When the community made a decision to hold the Games, there was also a decision made to house the visitors here attending the WEG.

Mr. Murphy asked what harm there is to tell Mr. Sexton that visitors can not park their RVs here. He said that this will only mean that those visitors will have to drive their RVs from a number of miles from Frankfort, or from the one 50 miles away at the Kentucky River Campground. The location of this campground is ideal for housing WEG visitors. The experience of the mobile home park staff will ensure a successful experience for those staying at Mr. Sexton's facility.

Mr. Murphy said that they understand that this use must meet all conditions of approval from the Board of Health, but they wanted to first approach the Board of Adjustment. He said that they had staff that are eager to supply the services needed for this RV park. They were also agreeable to conditions which have been discussed using a central dump area, if it is agreeable to the Health Department. They were agreeable to the traffic restrictions mentioned by Mr. Peck, as they have always been good neighbors to the residents along Old Iron Works Road. They had spoken with Mr. Free, who informed them that the general timeframe that they are using for WEG accommodations is from September 1 to October 20, and they would be agreeable to that limitation as well. They were willing to agree a condition about the removal of the gravel, and he suggested the 45 working days that Mr. Sexton had mentioned earlier.

Mr. Murphy said that the critical fact about this request was the experienced staff that Mr. Sexton had assembled. He said that RVs sometimes park in Wal-Mart parking lots, because of easy access to conveniences. They felt they could provide the same conveniences, but with an experienced staff that Wal-Mart parking lots couldn't offer. He said that their site is well located for this use for the Games. He said that temporary housing is needed, and they had the infrastructure to provide it here. They have demonstrated that all of the problems mentioned are readily solvable. He said that Mr. Sexton and Ms. Free are the hardest working people that he had ever met. They have the energy, the knowledge and the experience to offer this important service.

Mr. Murphy concluded by asking the Board to approve their request, because time was of the

essence. They will still have to go through the hoops of the Health Department, if the Board did grant its approval.

Discussion – Chairman Brown asked Mr. Gallimore if he had any concerns about directing the RVs to Lisle Road instead of using Old Iron Works Road, as had been suggested. Mr. Gallimore responded that he felt that Lisle Road was probably a safer route. He said that often, that is of paramount importance, although Fire Department access through a fire gate would be an important consideration as well. Captain Bowen mentioned that a chain locked gate at the two entrances on Old Iron Works would be acceptable, as the Fire personnel could access the property with bolt cutters, but the general public could not gain access via Old Iron Works Pike.

Mr. Luke Mathis, Fayette County Health Department asked the Board if they had any questions about the letter he provided to the Board. He said that the Health Department had been mentioned several times at this hearing. Chairman Brown asked if he was familiar with the plan that had been mentioned earlier by the appellant regarding the mobile truck that would visit the site to remove waste. Mr. Mathis responded that his office is responsible for issuing permits and regulating campgrounds, but that there are no provisions in place for temporary RV parks. The regulations that were in place require fixed sewage treatment, and a litany of other requirements, but that variances from some of the requirements can be requested.

Mr. Mathis said that the first proposal that they entertained from the appellant was submitted two weeks ago, and his office deemed that submission to be unacceptable at that time. He said that the latest submission was made earlier today, and that obviously, they had not had time to review it. Chairman Brown asked if his office was still recommending disapproval. Mr. Mathis responded that the Chair was correct, and that their recommendation was for disapproval.

Mr. Griggs asked that if they approve this conditional use, subject to Board of Health approval, would Mr. Mathis' office feel pressured to also approve this campground and let it go forward. Mr. Griggs said that if this conditional use couldn't be done right, then the Board wouldn't want this approved. Mr. Mathis responded that that would be at the pleasure of the Board. Chairman Brown

asked Mr. Mathis if he would be opposed to a condition that this use be approved by the Health Department. Mr. Mathis responded that he would certainly not be opposed to such a condition.

Ms. Meyer asked who would check to see that all of these items would be in place and operating smoothly. She asked what governmental agency would oversee these things. Mr. Hume said that his office will be charged to inspect the property, and see that all of the necessary sign-offs are obtained. He said that if his office needed to go out to this site, they would do so. Ms. Flynn said that the Health Department would also be "right there" to provide inspections, as well.

Chairman Brown asked the staff if they had reviewed the materials supplied by Mr. Murphy. Mr. Sallee responded affirmatively, and said that if the Board wished to disapprove the request, that the first finding (a.) in the Staff Report would still be applicable, given Mr. Mathis' testimony. He said that findings b. and c. from the Staff Report are no longer applicable, based on Mr. Murphy's information. He suggested that the Board consider the two findings from Ms. Van Nagell's letter instead. If the Board wishes to approve this use, Mr. Murphy had provided findings on the last page of his handout, and the staff would be willing to augment those findings if requested by the Board.

Chairman Brown asked whether the Planning Staff was ready to reverse its recommendation of disapproval of this use. Mr. Sallee responded that the Planning Staff does not change its recommendation unless they can provide alternate, written findings. Given the short amount of time to review the information supplied by Mr. Murphy, he said that there has not been enough time to do so in this instance.

Ms. Meyer commented that it is unfortunate that this application had been presented to the Board so close to the Games. She understood the need to accommodate the visitors to the WEG, but she was bothered that this decision was being forced from the Board only 90 days in advance of the Games.

Chairman Brown asked Mr. Murphy if they would be agreeable to a one-month continuance of this case to allow time to work out these issues with the staff. Mr. Murphy conferred briefly with his

clients, and then responded that time is important to the appellant. In response to Ms. Meyer's question, he said that they did not initially understand the demand that there would be for RV parking during the WEG. As to a one-month delay, Mr. Murphy said they would agree to do so, to work things out. He had hoped instead for an approval from the Board, with the stipulation that they must work things out with the Health Department. He said that it would involve a four or five week delay if the Board did not act today, but they would agree to a continuance, if this was required by the Board.

Chairman Brown commented that he thought that this use could be a very good thing for the community, but it could also be a cesspool. He did not think that would happen, but the possibility is there. He said that the people the Board relies upon for assistance had not had the chance to review the materials presented today. He felt that, while it would be inconvenient for the appellant, it may be more convenient for all concerned if this had been presented last December.

Mr. Stumbo said that he concurred with the Chair. He said there had been a lot of information submitted to the Board at this meeting, and some of it had only been submitted within the past day. He said that he did not object to their request, but he did want the staff to be able to have time to look at these materials thoroughly. He said that he simply was not ready to approve of this use today.

Chairman Brown said that, rather than a postponement, he would prefer to entertain a motion for a continuance of this case, since this hearing had already begun, based upon the advice provided to him in the past by Ms. Boland.

Action – A motion was made by Mr. Stumbo and seconded by Mr. Griggs to continue the public hearing on **C-2010-55: DANIEL SEXTON** (an appeal for a conditional use permit to establish a campground/RV park in the Agricultural-Rural [A-R] zone, on properties located at 4705 and 4721 Old Iron Works Road) to the Board's July meeting.

The votes on the motion were as follows:

Ayes: Brown, Griggs, Stumbo

Nays: Meyer, Stout

Absent: Moore, White

The motion passed, 3-2.

E. **Administrative Review**

1. **A-2010-56: DUNEDIN REALTY, LLC & NEW PROVIDENCE PARTNERS, LLC** - appeal for an administrative review to allow the temporary parking and occupancy of recreational vehicles in an Economic Development (ED) zone, on properties located at 2215 Mary Fay Place and 1201 Providence Place Parkway. (Council District 12)

The Staff Recommended: Disapproval, for the following reasons:

- a. Parking lots and parks for recreational vehicles are not identified in the Zoning Ordinance as principal permitted uses in the Economic Development (ED) zone. In addition, there are no principal uses that are substantially similar to such uses in this zone.
- b. Since the subject property is currently undeveloped, and the entire property is proposed to be used for RV parking, the proposed use cannot be considered as an accessory off-street parking area under Article 1-11 of the Zoning Ordinance.
- c. No justification has been provided by the appellant to support that the current provisions of the Zoning Ordinance can be interpreted to allow the proposed temporary use.
- d. The lack of any services such as potable water, electric and sewage disposal could adversely impact the surrounding properties as well as threaten the public health, safety and welfare.

At this point, Mr. Griggs announced that he would be disqualifying himself from this case (due to his relationship with the applicant).

Presentation – Mr. Sallee stated that the appellant was requesting an administrative review of the Division of Building Inspection's decision to deny a permit for the temporary parking of approximately 100 recreational vehicles during the World Equestrian Games on properties located at 2215 Mary Fay Place and 1201 Providence Place Parkway, two adjoining lots that are currently undeveloped. The Board was oriented to the location of the properties, as shown on the overhead, just northeast of the interchange at Newtown Pike and Interstate 75. The subject property, along with other property in this vicinity, is zoned ED (Economic Development). Photos were shown of the property's frontage along Newtown Pike; another vacant tract immediately to the west of the subject property; and property farther to the east that is undeveloped. Mr. Sallee said the Economic Development zone allows for a mixture of uses, including offices, research development and testing laboratories, medical services, light manufacturing and related uses. However, in the staff's review of the Zoning Ordinance, they were unable to find any uses similar to what the appellant proposed that is permitted in the ED zone (i.e., campgrounds, RV sales and storage, etc.). In addition, the staff looked at the allowable use for accessory parking, which is a typical use in most commercial zones. The Zoning Ordinance defines an accessory use as being incidental and subordinate to a principal use. As the photos illustrated, there is no principal use on either of the subject properties. Given the submitted site plan, the staff could not find a proposed use that is remotely similar to any other use in the ED zone that could possibly allow this use. As such, the staff has recommended disapproval of this appeal; and that the decision of the Division of Building Inspection be upheld. Four reasons are listed on the staff report that would be

concluded by the fact that the staff didn't see any compelling justification with the application to determine that Building Inspection has erred in their decision.

Chairman Brown asked about the large white building shown in one of the photos. Mr. Sallee responded that the Chairman was referring to a new Fairfield Inn, located in the B-5P (Interchange Service Business) zone.

Appellant's Presentation – Mr. John Rasnick was present and spoke about his background in the hotel, oil, gas and coal business, as well as his partnership in Providence Place, the Fairfield Inn (shown in photo), Hyatt Place and Homewood Suites in Hamburg. He said he decided to pursue a permit because several of his friends had talked to him about wanting a place to park close to the World Equestrian Games and a restaurant; and that they have what he described as a self-contained custom bus similar to those used by touring country music stars. He said that he looked at the WEG web site and found that the nearest place to park was in Boonesboro State Park, which he felt that the folks with large buses are not going to (want to) park there. Mr. Rasnick mentioned that a couple of large farms near the Equestrian Games venue wanted to be able to park buses, RVs and cars, which he could understand; but there are no nearby restaurants or other places within walking distance.

Mr. Rasnick stated that the subject property is inside the Urban Service Area, in the Economic Development (ED) zone. He said he wasn't sure, but he thought he could get permission from the City to actually build RVs on this site; and it seemed odd that he could build RVs on this site, but was unable to park them there. He didn't intend to do one thing to the property, in terms of any site improvements, and would probably park the RVs in the grass; however, he noted being informed by Captain Charles Bowen, with the Division of Fire and Emergency Services, that there are requirements to be met (having to do with gravel, etc.). Referring to the staff's recommendations, Mr. Rasnick said he agreed with what was said about the ED zone; and it didn't appear that the ED zone allows for RV campgrounds. He said there would be no bathroom facilities (which he balked at having to provide). He further stated that he was unable to find in the Zoning Ordinance under the B-5P or B-6P zones, where his hotels are located, any reference to giving half of the hotel rooms to the Visitors Bureau and paying them a 20% commission; but that's what he had to do. The Hyatt Place donated 65 rooms and

the Homewood Suites donated 50 rooms to the Visitors Bureau because he said they were told the World Equestrian Games is a special situation or event; and the Visitors Bureau wanted to make sure the right people got the rooms. He argued that the provision of parking for RVs, etc. during this event is also a special situation and a once-in-a-lifetime deal since the WEG will be held in Europe next year.

Mr. Rasnick compared this situation to game day at UK, noting that he didn't think RVs are normally parked in the student parking lot at Commonwealth Stadium, but they are there about four Saturdays in the fall. It was his opinion that people are "talking out of both sides of their mouths" with regard to the World Equestrian Games; and that he didn't see anything wrong with parking a bus in the grass. In closing, he said he wouldn't do this if the Board didn't want him to, and he thanked the Board for their time.

Since there were no questions or further discussion, the Chairman called for a motion.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs abstaining; White, Moore absent) to disapprove **A-2010-56: DUNEDIN REALTY, LLC & NEW PROVIDENCE PARTNERS, LLC** (an administrative review to allow the temporary parking and occupancy of recreational vehicles in an Economic Development [ED] zone on properties located at 2215 Mary Fay Place and 1201 Providence Place Parkway) as recommended by staff, and to uphold the decision by the Division of Building Inspection.

(Following disposition of the aforementioned case, the Chairman recalled C-2010-51: ALBERT WARFIELD.)

2. **A-2010-57: JOHN HADLOCK** - appeals for an administrative review to allow the continued use of a nonconforming freestanding business sign in an Agricultural-Rural (A-R) zone, on property located at 4440 Athens Boonesboro Road. (Council District 12)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. Article 17-7(a)(4) of the Zoning Ordinance allows one sign for any permitted use, not to exceed 32 square feet in size. The existing sign exceeds the Ordinance by 96 square feet, and is four times larger than the Ordinance allows.
- b. The appellant has not provided any documentation to support that the existing 128 square-foot sign can be considered as a legally constructed, non-conforming sign.

Representation – Mr. John Hadlock was present for his appeal. Chairman Brown commended his patience. Mr. Hadlock responded that he was glad that he was not trying to open a campground.

Staff Presentation – Mr. Sallee said that the appellant was requesting that a decision of the Division of Building Inspection be overturned about a sign on the subject property at 4440 Athens-Boonesboro Road.

Mr. Sallee displayed a few oblique aerial photographs of the subject property and of the sign in question. He said that the property is about ½ mile beyond the edge of the Urban Services Area, past the signalized intersection of Aphids Way and Hays Boulevard with this state highway. He said that the photos identified the two existing uses on this property, those being for a plant nursery and a golf driving range. He said that the driving range was approved by the Board in 1992, and that the plant nursery was approved by the Division of Building Inspection in January, 1995. Those dates are significant, because shortly thereafter, the Zoning Ordinance was amended to change plant nurseries from permitted uses to conditional uses in the A-R zone. Likewise, with that 1995 amendment, golf driving ranges are no longer allowed in the A-R zone.

Mr. Sallee said that the Staff Report cites Article 17-7(a)(4) of the Zoning Ordinance, which states that permitted uses in the A-R are permitted free-standing signs. He showed a photo of the two existing signs on the subject property – one for the nursery and one for the driving range. The sign for the plant nursery sign is along the right-of-way. Mr. Sallee stated that the driving range sign appears to meet the 32 square-foot limit of the A-R zone, while the plant nursery sign was significantly larger. He said that it also appears that the nursery sign straddles the right-of-way fence, and that part of that sign may be on the right-of-way. The plant nursery sign also advertised different products, which again, appeared to be non-compliant with the sign provisions of the A-R zone.

Mr. Sallee said that the setback of the sign is a concern to the staff. He then showed an oblique aerial photo from 2007 for the plant nursery sign, which appears to be a pole-mounted free-standing sign adjacent to the right-of-way. It did appear to be a different sign, but also appeared to be larger than 32 square-feet in size. He then displayed a photo of the driving range sign, and a photo of the garden center on the overhead projector.

Mr. Sallee said that the staff recommended disapproval of this appeal, and that the decision of the Division of Building Inspection be upheld for the two reasons listed above. He said that it does appear, however, that two signs are permissible at this location, although that is somewhat unusual for an A-R tract.

Appellant's Presentation – Mr. Hadlock stated that they had acquired this property last December, when they took over the Fayette Garden Center. He said that the sign in question was currently on the property at that time, and that it was the same one there when Ronny Johnson operated the Fayette Garden Center previously. He said that the sign was falling apart though, but his friend at Lamar Sign Company advised him to nail it back together and then it could be “rewrapped.” Otherwise, they have changed nothing about this sign.

He said that it was true that this sign used to be up on posts, and he speculated that Mr. Johnson had erected his own billboard, so to speak, without a permit. He said that he wasn't sure about that, but that all they had done recently to the sign was to re-wrap it.

Chairman Brown asked the staff if the sign had ever been permitted. Mr. Sallee responded that the plant nursery was issued a sign permit in April, 1996 for a 4' by 8' sign. Chairman Brown asked to see a photo of the current sign, and it was displayed on the overhead projector. Chairman Brown asked Mr. Hadlock about the size of the existing sign. Mr. Hadlock responded that it was 8' by 16' in size. He said that it consisted of four 4' by 8' sheets (of plywood). Chairman Brown said that, for whatever reason, it had quadrupled in size from the time it was permitted.

Mr. Hadlock stated that they had greatly improved the appearance of this property, and removed a number of old, coregated signs that had been attached to the fence. They had initially placed some banner signs on the fence, which he had since found out was illegal. The sign in question was the only one he was allowed to keep, but that is on a temporary basis. He said that he needed a sign for his business.

Mr. Stout said that he needed to take this sign down, but that he does need a sign. Mr. Stout asked if the sign had to be on the ground. Mr. Sallee responded that he did not believe that the Ordinance would prohibit an elevated sign, such as the one installed for the driving range. Mr. Stout asked if the driving range sign is a legal sign. Mr. Sallee thought so, but said that the portion below that read “Now Open” might not be in compliance with the restrictions.

Mr. Stout asked Mr. Hadlock if he could reduce the size of the sign, but raise it into the air. Mr. Hadlock responded that he thought he could do so, but that it was his impression that Building Inspection did not want him to have any sign for his plant nursery. He had noticed a drop in business once the banner signs were removed from the right-of-way fence, but thought that he would need to close his business if he had no sign at all. Mr. Stout said that it seemed that this problem could be solved, if it was reduced in size.

Mr. Hadlock asked, that if the sign were reduced in size, and elevated, whether it could be illuminated. Mr. Hume responded that he wasn't sure, but he was certain that a 32 square-foot sign could be placed for the nursery use, since it was issued a permit previously at this address.

Mr. Stout asked if the staff and the appellant could explore what type of sign would be appropriate here. Mr. Hume responded affirmatively. Mr. Hadlock said that the sign was visible for traffic coming from town, and he would want a new one to also be visible. Mr. Stout thought that there was a simple solution for this sign. He thought that an illuminated sign on a post would be suitable here.

Mr. Stout asked if this matter should be continued or postponed. Chairman Brown thought that it was apparent that some type of sign was permitted at this location, with a permit, but he wasn't sure about the illumination. Ms. Boland responded that only non-illuminated business signs were permitted in the A-R zone. She did not see any provision that allowed an illuminated sign. She also said that it appears that there is an 8' or 10' height limit for any free-standing sign in this zone. Mr. Saltee responded that the height limit does appear to be 10', and that the sign is to be non-illuminated or *indirectly illuminated*, meaning that there can be no light within the sign, but that a light may shine onto the sign.

Mr. Griggs said that while the Sign Ordinance provisions are very complicated, it did appear to him that a 32 square-foot sign was possible here, and that the Division of Building Inspection staff was willing to work with the appellant to review those possibilities. He thought that Mr. Hadlock could obtain a sign permit for his business.

Chairman Brown told the appellant that the Zoning Ordinance would not allow the Board to “grandfather in” this current sign, because it is too large. Mr. Hadlock agreed, but asked if he could keep this sign while he explores these options. He said that his banner signs drew attention to the fact that they had greatly improved this property, and his customers so commented. He was willing to show his “before” and “after” pictures of his business to the Board, if it would help in their decision. He also said that they are also mowing the grass along the right-of-way, because it’s mowing is not frequent enough by the State. Chairman Brown said that he wasn’t insistent that they existing sign be removed, but that next Monday morning, the appellant should visit the Division of Building Inspection to obtain a sign permit.

Mr. Stumbo asked if Mr. Hadlock should withdraw his appeal, or should the Board disapprove it instead.

Ms. Boland responded that there is very little real difference with either approach, as there was no time implications with either possible action.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to disapprove **A-2010-57: JOHN HADLOCK** (an appeal for an administrative review to allow the continued use of a nonconforming freestanding business sign in an Agricultural-Rural [A-R] zone, on property located at 4440 Athens Boonesboro Road) based upon the information provided at this hearing.

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wishes to present will be heard at this time.

Chairman’s Comment – Chairman Brown stated that his term was ending on the Board, and he was stepping down from the Board. He thanked the staff “on both sides of the aisle” for their work during his time on the Board. He would agree to come back in the future should the Board so wish it. He thanked his family and the other Board members for their help over the years. He said that, besides his wife agreeing to marry him, the second most flattering event in his life was when the Board asked him to come back to the Board.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wishes to present will be heard at this time.

- A. House Bill 55 Training Opportunity – Ms. Rackers stated that there would be an APA audio-conference on Wednesday, June 30, 2010 at 4:00 p.m. in the Division of Planning conference room. The title of this conference is “Planning Law Review” and will count toward 1.5 hours of House Bill training credits for Board of Adjustment and Planning Commission members, as well as for the staff.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date will be July 30, 2010.

- VII. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 5:18 p.m.

Peter Brown, Chairman

James Griggs, Secretary